IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2096 OF 1993.

Dr. Bhaskar Shripad Galande, age about 54 years, occupation:business residing at Indrajeet Building, Dehu Road, District Pune.	.. Petitioner (Ori.Defdt.)

Versus

Shri Mohmad Babulal Tamboli, since deceased through legal heirs: 1A. Smt. Shakena Mohammed Tamboli, Adult, Occ. Household. 1B. Shri Razzak Mohammad Tamboli, Adult, Occ. Business. 1C. Shri Suttar Mohammad Tamboli, Adult, Occ. Business. 1D. Shri Masjid Mohammad Tamboli, Adult, Occ. Business. 1E. Sou. Begam Mohammad Tamboli, Adult, Occ. Household. Respondent Nos.1 to 5 residing at 43, Gurunanak Road, Dehu Rod, Pune 1F. Smt. Fatimabai M. Tamboli, Adult, Occ. Household. 1G. Shri Basheer M. Tamboli, Adult, Occ. Business. 1H. Shri Mahaboob M. Tamboli, Adult, Occ. Student, 1I. Nasareen Sarifa, Adult, Occ. Household. 1J. Zaleena M. Tamboli, 1K. Shabana M. Tamboli, R.Nos.6 to 11 residing at Tamboli Building, Near Zilla Parishad School, Vikas Nagar, Kiwale, Dehu Road, Pune.	W.P. dismissed against R.Nos. 1I to 1K as per Order dated 18/07/2002. .. Respondents.

Mr. A.V. Anturkar for the petitioner.

Mr. C.S. Dalvi with Mr. S.S. Pandit for the respondents.

CORAM: ANOOP V. MOHTA, J.

DATED: 03RD AUGUST, 2005

ORAL JUDGMENT. :

1. The petitioner-tenant has invoked Article 227 of the Constitution of India and sought to challenge the concurrent finding given by the Courts below, whereby, a suit filed by the respondents-landlords have been decreed on the ground of keeping the premises unused without reasonable cause continuously for a period of more than six months immediately prior to the date of filing of the suit. Therefore, the present Writ Petition by the petitioner-tenant.

2. The premises in question is Flat No.48, Guru Nanak Road, Dehu Road, Pune. It was let out in the year 1973 @ Rs.200/- per month exclusive of education cess etc., as alleged, for a residential purpose only. The petitioner, till 1975, had used the said premises for Dispensary-cum-Nursing Home, managed by the petitioner's wife Dr. (Mrs.) Swati M. Galande. The said dispensary was closed sometime in the year 1975. Since then the premises has been closed and unused. The

respondents-landlords made a request to hand over the suit premises, but in vain. The petitioner-tenant, thereafter met with a serious accident and became permanently disabled. The Respondents-landlords filed a suit in the Small Causes Court at Pune (for short "Trial Court") for possession as the petitioner-tenant started misusing the premises for unauthorisedly illegal purposes of gambling. Most of the time, it was closed and unused. The petitioner-tenant resisted the said suit and specifically averred that the suit premises was let out for dispensary purpose and the same has been in use till this day. The parties led evidence of PW1, Mohomad Babulal Tamboli, the landlord, PW2 Rafiq Babulal Atar and PW3 Kanapuram Chakala Mallanda. The petitioner examined himself i.e. DW1 Dr. Bhaskar Shripad Galande and DW2 Sriram Annaji Vadalkar. The Trial Court, after considering the evidence and the material placed on the record, held that the respondent-landlord proved that the petitioner-tenant kept the premises closed and unused without reasonable cause continuously for a period of more than six months immediately prior to the date of filing of the suit and, therefore, granted the decree for possession and also ordered for future mesne profits. The Appeal preferred by the petitioner-tenant also came to be dismissed by the Additional District Judge, Pune (for short "Appellate Court") by the

judgment and order dated 18th March 1990.

3. Heard the learned counsel Mr. A.V. Anturkar for the petitioner-tenant who basically contended that as per the unclear case of the respondents-landlords themselves that the suit premises was given to the petitioner-tenant for the residential purpose and/or for the dispensary purpose, the Appellate Court was wrong in not considering this issue first, before confirming the decree of possession passed by the Trial Court. He relied on 1981, Mh.L.J., 437 **C.R. Shaikh Vs. Lilabai D. Rohida & Anr.** He also relied on (2001) 3 S.C.C., 179 **Santosh Hazari Vs. Purshottam Tiwari** to support his contention that the Appellate Court must display conscious application of mind and record findings supported by the reasons on all issues and contentions. The Appellate Court committed an error in not deciding the issue on the basis of contentions, as raised by the petitioner. Therefore, on that ground alone, the Petition needs to be remanded back to the Appellate Court for the fresh adjudication on all the issues. He further submitted that the petitioner-tenant has been using the premises for the purpose it was let out and to support the said contention, he relied on the various electricity bills and receipts of the period from 30/10/1975 to 20/6/1986. Therefore, this itself covers

the six months' period prior to the filing of the suit, apart from the evidence led by the petitioner-tenant to justify the submission. The learned counsel Mr. C.S. Dalvi with Mr. S.S. Pandit for the respondents resisted the above submissions and supported the concurrent findings given by the Courts below.

4. The basic Section i.e. 13(1)(k) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (for short "The Bombay Rent Act") is reproduced below:

> "**13. When landlord may recover possession.**
>
> (k) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit;"

5. Both the Courts, after considering the evidence led by the parties, arrived at one conclusion that the premises are closed and unused without any reasonable cause, continuously for a period of more than six months' prior to the date of filing of the suit on the following facts and reasons. The premises in question are not in use for the purpose of residence and/or even for dispensary. It was unused for residence or dispensary since 1975. The photographs exhibited on

the record further reflect that some bottles were lying scattered in the room, the kitchen was unused, there was broken glass and the premises were unclean. The water supply in the suit premises was also disconnected. The Trial Court, therefore, as observed by the Appellate Court, was right in holding that the premises were not in use by the petitioner-defendant for the purpose for which it was let out. The telephone connection was also transferred in Indrajit Building. There is no material placed on the record by the petitioner to justify that the premises are in actual use as dispensary and/or residential purpose. The Dispensary Register (Exhibit-G) maintained from 4/2/1973 only refers to the same admissions of the patients. This is in no way sufficient to confirm the case of the petitioner-tenant that the premises in question have been in actual use as a dispensary and/or even for residence purpose.

6. The Appellate Court in paragraph 11 observed further that the Register, as referred, was in use for the Manik Clinic which is situated in Dehu Road, of one Dr. Baldote. It was used by the petitioner from the year 1972 to 1976. The Register (Exhibit-H) was also unreliable and was maintained irregularly. There were no dates, but only months and years mentioned therein. The Register shows the overwritten entries of December

1985 and September 1986. These two Registers, therefore, also nowhere connect or support the petitioner-tenant's case.

7. One Sriram Vadalkar (DW2), a patient of the petitioner failed to produce any document to support that the prescription was given or that he had visited the premises. The Appellate Court has observed rightly that this witness and his family members were having facility of free medial aid from his department as provided by the Central Government. The evidence of this got up witness, therefore, is unacceptable.

8. Therefore, in the facts and circumstances of the present case, the Apex Court's decision in **Santosh Hazari** (supra) is also not helpful to the petitioner-tenant. The Appellate Court, in fact, after taking into consideration the facts and circumstances of the case, and the submission made by the Advocate, recorded the finding in support of all the issues and contentions raised by the landlord and rightly confirmed the reasons given by the Trial Court.

9. Some consumption of electricity, as contended, based on the electricity bill on the record, by itself

cannot be the reason to discard the case of the respondent-landlord specially in the present facts and circumstances of the case. There is a material on the record to justify that the petitioner-tenant was not using the said premises for the purpose it was let out and further continuously for a period of more than six months immediately prior to the date of filing of the suit.

10. Therefore, learned counsel for the petitioner-tenant has contended that the respondent-landlord failed to bring on the record any material to support the case that the premises were let out for the dispensary purpose, when the case of the landlord was that it was let out for residential purpose only. In this background, the Court below, erred in granting the decree for possession on the foundation of Section 13(1)(k). This Section requires that the landlord must come with a specific case that the premises in question were let out for a particular purpose and the petitioner-tenant thereafter was not using the said premises for the purpose for which it was let out without reasonable cause continuously for a period of six months. As in the present case, both the parties have led evidence and admittedly, in view of the material on the record and the rent receipt (Exhibit-42)

which goes to show that the premises were let out for dispensary purpose. Even assuming for a moment that as per the landlords the premises were initially let out for the residential purpose, but the rent receipt, being a written document, further clarifies that it was let out predominantly for the dispensary purpose.

12. The rent receipt (Exhibit-42) dated 24/11/1972 endorses the fact that the premises were let out for the practice purpose. Therefore, the contention of the counsel for the petitioner that the Appellate Court failed to take into consideration the basic issue of use of the premises for residential or for dispensary purpose is insufficient to discard the reasoning given by the Courts below. The Appellate Court, in fact, has accepted the submission of the petitioner in paragraph 12 and observed as follows:

> "I agree with the submissions of the learned counsel and the rule is that the onus is on the landlord to prove that the suit premises is kept vacant for more than six months continuously and the tenant is not using it for a continuous period of six months immediately preceding the date of suit. Applying these principles to the said case, it seems that there are so many circumstances which show that the suit premises was kept vacant and it was not in use for more than six months. The circumstances are that no cleanness of the

> suit premises, bottles were found broken in the suit premises, no electricity consumption, shifting of telephone, cut off of water connection which establish that the defendant is not using the suit premises for more than six months continuously immediately preceding the date of suit.".

13. In view of the material placed on the record, there is clear finding given by the Courts below that the petitioner-tenant was not using the premises for the purpose for which it was let out. The premises were closed and unused since long.

14. In this background, the reasoning given by both the Courts below appears to be within the framework of law, as well as, the record. The view taken by the Courts below is plausible and reasonable. There is no perversity in the said view.

15. Taking all this into account, the present Writ Petition is dismissed. Rule is discharged. Interim stay stands vacated. No order as to costs.

16. At the request of Mr. A.V. Anturkar, learned counsel appearing for the petitioner, the effect and operation of this order is stayed for a period of eight (8) weeks.

[ANOOP V. MOHTA, J.]

[srpasha@hc]